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12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

13 IN AND FOR THE COUNTY OF MARICOPA

14 THE STATE OF ARIZONA *ex rel.* TERRY
15 GODDARD, the Attorney General; and THE
16 CIVIL RIGHTS DIVISION OF THE ARIZONA
17 DEPARTMENT OF LAW,

18 Plaintiff,

19 CELINE A. BAKER, a single person,

20 Plaintiff/Intervenor,

21 vs.

22 PIMA COUNTY, a political subdivision of the
23 State of Arizona; CLARENCE W. DUPNIK, in
24 his official capacity as PIMA COUNTY
25 SHERIFF; and the PIMA COUNTY SHERIFF'S
26 DEPARTMENT,

27 Defendants.

No. CV2008-022586

SECOND AMENDED COMPLAINT
(Non-Classified Civil)

(Assigned to Hon. Joseph B. Heilman)

28 Plaintiff, the State of Arizona *ex rel.* Terry Goddard, the Attorney General, and the
Civil Rights Division of the Arizona Department of Law (collectively "the State"), for its
Second Amended Complaint, alleges as follows:

INTRODUCTION

This is an action brought under the Arizona Civil Rights Act, A.R.S. § 41-1401 *et seq.* (“ACRA”), to correct unlawful employment practices, to provide appropriate relief to an aggrieved person, and to vindicate the public interest. Specifically, the State brings this matter to redress the injury sustained due to Defendants’ failure to make a reasonable accommodation for the physical limitations of their disabled employee, Celine A. Baker (“Baker”), and for Defendants’ retaliation against Baker for engaging in protected conduct, all in violation of ACRA.

JURISDICTION AND VENUE

1. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1481(D).

2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

PARTIES

3. The Civil Rights Division of the Arizona Department of Law (“the Division”) is an administrative agency established by A.R.S. § 41-1401 to administer and enforce the provisions of the ACRA.

4. The State brings this action on its own behalf and on behalf of Baker, who is an aggrieved person and a charging party within the meaning of A.R.S. § 41-1481.

5. Defendant Pima County (“the County”) is a political subdivision of the State of Arizona and is an employer within the meaning of A.R.S. § 41-1461(4).

6. Defendant Pima County Sheriff’s Department (“PCSD”) is a public safety and law enforcement agency of the County and is an employer within the meaning of A.R.S. § 41-1461(4). Defendant Clarence W. Dupnik (“Dupnik”) is the elected Sheriff for Pima County and is the department executive with responsibility and control over all personnel decisions and actions within the Pima County Sheriff’s Department. Dupnik is an employer within the meaning of A.R.S. § 41-1461(4).

GENERAL ALLEGATIONS

7. On or about November 28, 2004, Defendants hired Baker as a full time Sheriff’s Dispatcher Trainee for its Communications Center located at 1750 E. Benson Highway,

1 Tucson, Arizona. Commencing on or about February 25, 2007, Baker became employed as a
2 9-1-1 Call Taker ("Call Taker") for PCSD at the same location.

3 8. Baker has, and at all relevant times had, a physical impairment of her left knee
4 which substantially limits her ability to stand and walk, and causes her to lose feeling in her
5 knee and fall to the ground. Baker has a reconstructed patellar tendon, postoperative tendonitis,
6 hypo-nerve sensitivity, and weakness and irritation of her left knee following four surgical
7 procedures on that knee more than ten years ago.

8 9. Baker's orthopedic surgeon instructed her to use a service animal at work to assist
9 her in standing, walking, and bracing against falls because a service animal would avoid further
10 muscle weakness and atrophy to Baker's left knee resulting from long-term use of crutches.

11 10. Prior to being hired by Defendants, Baker started the process of having a dog
12 named Merlin trained to be her service animal.

13 11. Upon information and belief, Baker notified representatives of Defendants prior
14 to employment, during post-employment training, and after assignment to the Communications
15 Center that, due to her disability, she needed to have her service animal assist her at work.
16 PCSD's "911/Dispatch Manager" for the Communications Unit, Patsy E. Joy ("Joy") advised
17 Baker to speak with the County's ADA Coordinator.

18 12. On or about December 22, 2004, Baker met with Christine Molina ("Molina"),
19 the County's ADA Coordinator; and Debbie Haro of the County's HR Department. During the
20 meeting, Baker requested to have her service animal with her at work as a reasonable
21 accommodation for her disability. At that time, Molina advised Baker that she could not have a
22 service animal at work until after it was certified, which Baker anticipated would take another
23 1-3 years. Upon information and belief, Molina told Baker that she would need to provide two
24 doctor's notes from her orthopedic surgeon: the first to confirm that Baker had a disability
25 requiring a service animal at work, and the second to establish that Baker still had a disability
26 requiring a service animal at work after her dog was pre-certified as a service animal.

1 13. Upon information and belief, on or about March 2005, Baker faxed a note from
2 her orthopedic surgeon to Molina documenting Baker's disability and related need for a service
3 animal at work.

4 14. Upon information and belief, on or about October 2006, Baker's dog Merlin
5 became pre-certified as a service animal, and Baker arranged another appointment with her
6 orthopedic surgeon to acquire the second doctor's note.

7 15. Upon information and belief, on or about late January or early February 2007,
8 Baker advised Molina by telephone that Merlin was pre-certified as a service animal and that
9 Baker had obtained an updated doctor's note from her orthopedic surgeon. Molina then
10 informed Baker that the County had adopted a new procedure for processing reasonable
11 accommodation requests from employees with disabilities, and that Baker would have to
12 submit a written request for accommodation of her disability in accordance with the new
13 procedure.

14 16. On or about February 15, 2007, Baker made a written request to PCSD for a
15 voluntary demotion from her position as a Telecommunication Dispatch Trainee to that of a
16 Call Taker. In approving Baker's request, Information Technology Division Commander Capt.
17 P. Wilson ("Wilson") noted that although Baker's performance as a Dispatch Trainee has not
18 risen to a level that meets minimum requirements, Baker does perform satisfactorily as a Call
19 Taker.

20 17. Upon information and belief, Baker's dog Merlin achieved certification as a
21 service animal on or about April 14, 2007.

22 18. On or about June 22, 2007, Baker submitted a written request for a reasonable
23 accommodation of her disability to Molina, pursuant to the County's Administrative Procedure
24 No. 23-29. Specifically, Baker requested to have her service dog at work to assist her with
25 walking, standing, retrieving objects, and to brace her against collapsing to the ground when
26 falling.

27 19. On or about August 17, 2007, Baker received a mid-probation demotion
28 evaluation in which she received a successful rating in all aspects of her work as a Call Taker.

1 The narrative summary of Baker's successful rating included a reference to an incident that
2 occurred on June 25, 2007 ("the June 25, 2007 incident"). Joy, Communications Manager Lt.
3 M. Sacco ("Sacco"), and Wilson each approved Baker's successful rating.

4 20. Thereafter, on or about August 22, 2007, the County's ADA Panel met to review
5 Baker's reasonable accommodation request and supporting medical documentation. The
6 County's ADA Panel determined that Baker was "ADA eligible" due to "permanent, limiting
7 walking and standing (mobility)," and that an interactive process would be arranged to address
8 Baker's reasonable accommodation request.

9 21. On or about September 3, 2007, Baker sent an email to Joy to advise that the
10 ADA Panel had met and to request a meeting with Joy as soon as possible. Baker also advised
11 Joy that Molina would be contacting Joy to set up a meeting to discuss Baker's assistance dog.

12 22. On or about September 4, 2007, Joy responded to Baker by email and stated that
13 she would be meeting with Wilson, Sacco and Molina before she could meet with Baker.

14 23. On or about September 10, 2007, Baker received a Letter of Reprimand signed by
15 Wilson for the June 25, 2007 incident which had been covered in Baker's August 17, 2007 mid-
16 probation demotion evaluation in which Baker's performance was deemed successful.

17 24. On or about September 11, 2007, a pre-interactive process meeting took place
18 between Molina, Wilson, Sacco, Joy, Deputy County Attorney Wendy Petersen, and other
19 representatives of Defendants to discuss Baker's request to have her service dog at work as a
20 reasonable accommodation for her disability.

21 25. The job description for PCSD's Call Taker position states: "All positions require
22 the ability to sit and/or stand for protracted periods of time."

23 26. During Baker's employment, PCSD Call Takers and Dispatchers frequently had
24 to yell across the room to each other especially while working on a high priority or dynamic
25 call, and commonly moved around the room at the Communications Center while performing
26 their job duties.

27 27. On or about September 18, 2007, Baker met with Molina and representatives of
28 PCSD for an interactive process meeting to discuss Baker's request for a reasonable

1 accommodation. During the meeting, Sacco stated that Baker did not need a service animal to
2 perform the essential functions of her Call Taker position, and expressed concern that Baker's
3 service dog could potentially: (1) create a trip hazard in a dimly lit environment, (2) be a
4 pronounced and long-term distraction for other employees, (3) require more frequent deep
5 cleaning due to exaggerated accumulation of dust and dirt despite Baker's efforts to have the
6 dog regularly groomed, (4) cause odors and allergens that the existing adequate air circulation
7 system could not handle, and (5) impede retention of capable current and future
8 Communications Center employees by triggering allergies and animal phobias. In that meeting,
9 Sacco, told Baker that he was happy with her as an employee and was happy with her work.

10 28. In lieu of the accommodation that Baker requested, Defendants offered to allow
11 Baker to select the work station of her choice and have certain materials located at or near her
12 work station to reduce the need for her to walk away from her work station, but required Baker
13 to continue using her crutches at work. These alternate measures offered by Defendants did not
14 eliminate the risk of additional muscle weakness and atrophy to Baker's left knee from
15 continued long-term use of crutches, nor did they assist Baker in retrieving work-related objects
16 or ambulating faster in emergencies. In addition, unlike her service animal, the crutches did not
17 serve as a brace when Baker fell or assist her in standing after she fell. The alternate measures
18 offered by Defendants did not reasonably accommodate Baker's disability.

19 29. On or about October 1, 2007, Sacco notified Baker by letter that her requested
20 accommodation for her disability had been denied for the reasons discussed at the September
21 18, 2007 meeting. In that letter, Sacco also stated that he looked forward to Baker's continued
22 employment with the PCSD Communications Unit and her contribution to its overall mission.

23 30. On or about October 10, 2007, Baker filed a dual charge of employment
24 discrimination with the Division and the EEOC ("the First Charge") against PCSD based upon
25 Defendants' failure to make a reasonable accommodation for her disability.

26 31. On or about October 22, 2007, Defendant PCSD received the First Charge.
27
28

1 32. On or about October 23, 2007, Baker's supervisor, Johanna Rankin ("Rankin")
2 sent a memorandum to Joy criticizing Baker for her handling of an incident with Rankin's
3 assistance on October 21, 2007 ("the October 21, 2007 incident").

4 33. Thereafter, on or about October 29, 2007, Sacco forwarded to Wilson a
5 memorandum from Joy dated October 26, 2007 regarding the October 21, 2007 incident. In
6 handwritten notes, Sacco recommended that Baker receive a one-day suspension. In
7 handwritten notes, Wilson concurred with the recommendation to suspend Baker one day for
8 the October 21, 2007 incident.

9 34. On or about November 8, 2007, Sacco wrote a memorandum to Wilson
10 recommending that Baker's demotion probation be ended as a failure to meet minimum
11 requirements and stating his expectation that this action would result in a layoff for Baker. In
12 handwritten notes that same date, Wilson concurred with Sacco's recommendation for a
13 demotion probation failure and layoff for Baker.

14 35. On or about November 14, 2007, Defendants issued to Baker a Notice of Intent to
15 Suspend Without Pay with the implementation of a one-day unpaid suspension. The November
16 14, 2007 Notice also informed Baker of the opportunity to meet with Wilson to respond to the
17 charges and provide evidence on her behalf.

18 36. On or about November 23, 2007, Baker met with Wilson to review the proposed
19 one-day unpaid suspension action.

20 37. On or about December 4, 2007, Defendants issued a Notice of Demotion
21 Probation Failure to Baker. The December 4, 2007 Notice indicated that Baker would be
22 referred to Human Resources for layoff.

23 38. On or about December 18, 2007, Defendant Pima County issued a Layoff Notice
24 to Baker advising that she would be placed on layoff status effective January 17, 2008.

25 39 On or about April 4, 2008, Baker filed a dual charge of employment
26 discrimination with the Division and the EEOC ("the Second Charge") against PCSD for
27 alleged retaliation.
28

40. On August 18, 2008, the Division completed its investigation of the First Charge and issued its Reasonable Cause Determination.

41. The State, Baker, and Defendants did not enter into a Conciliation Agreement, permitting the filing of the State's initial Complaint pursuant to A.R.S. § 41-1481(D).

42. On March 23, 2009, the Division completed its investigation of the Second Charge and issued its Reasonable Cause Determination.

43. The State, Baker, and Defendants did not enter into a Conciliation Agreement with respect to the Second Charge, permitting the State to file a claim related to the Second Charge pursuant to A.R.S. § 41-1481(D).

COUNT ONE

[Discrimination in Violation of A.R.S. § 41-1463(F)(4)]

44. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 43 of this Second Amended Complaint.

45. Defendants are employers within the meaning of A.R.S. § 41-1461(4). At all relevant times, Defendants employed Baker as a Call Taker.

46. Baker is an individual with a disability within the meaning of the ACRA.

47. Baker was a qualified person with a disability in that she was capable of performing the essential functions of the Call Taker position, with or without a reasonable accommodation.

48. Baker requested that Defendants make a reasonable accommodation to her known physical limitations by allowing her to use her service animal at work. Baker needed the service animal to assist her with walking, standing, retrieving objects, bracing against falls, getting up after falling, as well as avoiding further deterioration and atrophy to her knee from long-term use of crutches and falling. Baker needed her service animal to perform essential functions of the Call Taker job and to enjoy benefits and privileges of employment equal to those enjoyed by non-disabled Call Takers.

49. Defendants unlawfully denied Baker's request for a reasonable accommodation without demonstrating that the requested accommodation would impose an undue hardship upon the operation of Defendants' Communication Center, in violation of A.R.S. § 41-1463(F)(4).

COUNT TWO
[Discrimination in Violation of A.R.S. § 41-1463(B)]

50. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 49 of this Second Amended Complaint.

51. It is an unlawful employment practice for an employer to discriminate against any individual with respect to the individual's terms, conditions or privileges of employment because of an individual's disability. A.R.S. § 41-1463(B).

52. Defendants issued the September 10, 2007 Letter of Reprimand to Baker in response to her request for an interactive process meeting with Defendants regarding her disability-related request to use her service animal at work.

53. In so doing, Defendants unlawfully discriminated against Baker in the terms, conditions or privileges of employment because of disability in violation of A.R.S. § 41-1463(B) of the ACRA.

COUNT THREE
[Retaliation in Violation of A.R.S. § 41-1464(A)]

54. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 53.

55. It is an unlawful employment practice for an employer to discriminate against any employee because that employee has opposed any unlawful employment practice or has made a charge of discrimination alleging a violation of the ACRA. A.R.S. § 41-1464(A).

56. Defendants issued the Notice of Intent to Suspend Without Pay, the Notice of Demotion Probation Failure, and the Layoff Notice to Baker in retaliation for her filing of the First Charge of discrimination with the Division against PCSD.

57. In so doing, Defendants violated A.R.S. § 41-1464(A) of the ACRA.

1 58. As a result of Defendants' discriminatory conduct and Baker's discharge and/or
2 constructive discharge from employment, Baker suffered monetary damages for which she
3 should be compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the State respectfully requests that this Court:

6 A. Enter judgment on behalf of the State, finding that Defendants unlawfully
7 discriminated against Celine A. Baker because of disability and retaliation, in violation of the
8 ACRA;

9 B. Enjoin Defendants, their successors, assigns and all persons in active concert or
10 participation with Defendants, from engaging in any unlawful employment practice that
11 discriminates on the basis of disability or retaliation in violation of the ACRA;

12 C. Order Defendants to reinstate Celine A. Baker to the Call Taker position or other
13 equivalent position and provide any other equitable relief the Court deems appropriate;

14 D. Order Defendants to make changes to their policies and practices related to
15 reasonable accommodation, interactive processes and retaliation to preclude them from denying
16 employment opportunities because of disability and retaliation, and to comply with ACRA;

17 E. Order the State to monitor Defendants' compliance with the ACRA;

18 F. Award the State its costs incurred in bringing this action, and its costs in
19 monitoring Defendants' future compliance with the ACRA;

20 G. Award monetary damages to Baker pursuant to ACRA in an amount to be proven
21 at trial; and

22 H. Grant such other and further relief as this Court may deem just and proper in the
23 public interest.

24 DATED this 16th day of April, 2009.

25 TERRY GODDARD
26 Attorney General

27 By /s/ Sandra R. Kane
28 Sandra R. Kane
 Assistant Attorney General

1 ORIGINAL of the foregoing filed
2 Electronically with the Clerk of the
3 Maricopa County Superior Court
4 this 16th day of April, 2009.

5 and

6 COPIES of the foregoing sent
7 via email and first class mail
8 this 16th day of April, 2009, to:

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